

LAKE COUNTY BOARD of ADJUSTMENT
November 12, 2015
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Frank Mutch, Steve Rosso, Don Patterson

STAFF PRESENT: LaDana Hintz, Robert Costa, Jacob Feistner, Lita Fonda, Wally Congdon

Frank Mutch called the meeting to order at 4:02 pm. He introduced the new civil attorney, Wally Congdon.

In the 6th line of the next to last paragraph on pg. 7 of the August 12 minutes, Steve added 'were' between 'they' and 'comfortable'. **Motion made by Don Patterson, and seconded by Steve Rosso, to approve the August 12, 2015 meeting minutes as amended. Motion carried, all in favor.**

Motion made by Don Patterson, and seconded by Steve Rosso, to approve the Sept. 9, 2015 meeting minutes as written. Motion carried, all in favor.

HOEFT CONDITIONAL USE—EAST SHORE (4:05 pm)

Jacob Feistner presented the staff report. (See attachments to minutes in the Nov. 2015 meeting file for staff report.)

Don asked if there was a new well on the property. Jacob said it wasn't drilled where it was shown off the property. Steve confirmed with Jacob that the Hoefts owned both pieces. Jacob noted that together the size owned was about 182 acres.

Frank checked for applicants, agents or public for comment. No one was present to comment.

Steve asked about attachment 5B where no door was shown on the second floor from the bedroom to the inside of the structure. The door shown opened onto a little deck, which had no stairs proposed so Jacob thought someone forgot to draw the door. Alternate findings, solutions and thoughts were offered by the group.

Frank asked if there was leeway if the applicants found changes in the process of construction or if they had to come back. Jacob said [the Board] wouldn't look at the door but [would see changes] if they expanded the size of the building. Frank said they could change things within the building. They were looking at square footage. Steve added they were also looking at use of the structure. Jacob pointed to the stairway, which was the only access to the upstairs.

Steve asked when the boundary line adjustment was done. Jacob answered it was done in 2011. Steve said there was no impact to the neighbors the way this looked now. If the other property was sold, there would be a 72-foot setback.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use with the findings and conditions in the staff report. Motion carried, all in favor.

VINES SETBACK VARIANCE—CITY COUNTY (4:15 pm)

Robert Costa introduced Heather Vines and the Gavin-Hanks Architectural Studio representative, Vince Gavin, and presented the staff report. (See attachments to minutes in the Nov. 2015 meeting file for staff report.) He made a correction in the next-to-last paragraph on pg. 13 in the 7th line, where it should read solid, clay-based soils rather than pervious, clay-based soils. Those soils were impervious. He pointed out the handout of public comment received after the staff report was sent, which was not in support of the variance.

Robert mentioned the findings suggested the variance wouldn't be appropriate. There didn't appear to be hardship in this case. If the Board disagreed with the suggested findings and determined that the variance would be appropriate, the variance probably should be modified in order to locate the structure further away from the slope in consideration of the circumstances involved with this lot, including the sandy-clay soils that have been referenced, the fact the development was already very close and a number of other considerations. [Staff] were very concerned that placing the structure on its proposed location at the top of that slope would result in a water quality violation. The sands in the lakeshore area with the big slope were already starting to slough with minimal development there. They were concerned about the ability for that slope to be preserved and protected, and in addition, for rainwater to not further impact that slope. They didn't want to see a water quality violation nor did they want the development to fall into the lake, which they'd seen before in other parts of the County. It was up to the Board how to consider this request. If granting the variance seemed appropriate to the Board, then granting the minimal variance that could mitigate for the potential nuisances involved with the development would be something on which they could make findings, and work towards getting the applicants what they wanted.

Steve talked about #9 (pg. 12) which talked about V.C.1 (pg. 6) but not V.C.2, which he read. He asked what was considered adjoining, looking at attachment 7. Robert said there would be 3 adjoining lots, keeping in mind that these were approximate lot lines. Steve said that meant only 33% of the adjoining lots [had setbacks consistent with or greater than those proposed] so the request wouldn't fit in V.C.2. Robert said it wouldn't fit because the covenants did dictate setbacks. The point wasn't to say they didn't qualify for a variance but they couldn't use those items to make that argument. If a variance were to be granted by the Board, they would want to stick to essential public health, safety and general welfare facts.

Frank noted the lot was 120 feet wide at the lake but somewhat trapezoidal so it was slightly wider where the house was. Robert gave a width of about 145 feet there. Frank asked if having 50% of the lot width for setbacks was common. Robert said this subdivision happened in 1994. This was about the time this version of the zoning regulations came into play. Most of the lots in this subdivision were fairly similar, with the exception of lots 2A and 2B. The 30-foot standard was what they saw for most of the developments in the Polson area.

Frank assumed the soils and other issues could be dealt with from an engineering basis, coverage of landscaping, etcetera. Robert said that they didn't have those tools in that they didn't have requirements for engineering. The shoreline buffer was 50 feet. The structure itself was about 150 feet away from the lake. They could really only work within a 50-foot area. What the applicants requested gave more of an opportunity to protect things if they wanted to grant the variance. If they were to propose a development that complied, there wouldn't be engineering requirements or other things like that. They would be required to get a stormwater management plan that was done by a professional. LaDana added that staff would encourage them to check into those things. Even though the County wasn't reviewing it, it didn't mean you shouldn't do it. They'd had other properties in that particular area where [owners] had gone to the extent of the geotech studies and done additional work because of the soils in the area, the water situation and so forth to make sure they were protecting their structure, their investment and the lake.

Frank said an issue was raised as to whether it should be allowed or not. If it was raised as an issue, there should be an option to mitigate it. Robert said the question would be what that mitigation would be if they could find findings to support that. If they could make findings, it was the Board's decision. Frank said his finding would be you could pound piers in and do all kinds of things. He didn't think they were into that miniscule [level]. It was a burden on the Board to have to write new findings within the same meeting.

Wally thought there were a couple of things they needed. The hard part of variances was they had the letter of the law that the zoning said. They couldn't vary it unless there was something unique, which was the property. The reason you had the zoning had nothing to do with the geology of the parcel. It had to do with a general, broader, bigger picture of how you dealt with density, water quality, viewsheds, soil slumps and congestion. The viewshed wasn't just the view from the lake looking at the parcel or above the parcel looking at the lake. It was also the view from this person's parcel to what's next door and what the lake looks like. The uniqueness of each parcel wasn't limited just to that. The house that had a variance to be too close to the line next door did affect what it looked like from the lake and this woman's view from her room, outside the door and what's too close to the line there. You had to be creative to get to the goals you had in the rules in the first place. In a sense it was harder for a Board of Adjustment to write findings of fact but they needed to do it. The agenda couldn't be to just say no. The agenda could be if they were going to do it, how they got to what they wanted to achieve. If it couldn't be done, the answer was no. If it could be done in the broader picture, with

the help of the planners, the Board and the professionals or landowners who came, they needed to figure it out.

Wally had read three things in the Polson Development Code (PDC). There was a statement about water quality in the lake, slippage, runoff, etcetera. Another part was it wasn't to save the view of what it looked like there; it was the view from that person out and away and beyond as well. He talked about the findings to make to get there. This might have a huge slope and a runoff issue when you looked at attachment 7. You could see what the sediment edge looked like on the subject property and the project next door (lot 2B). You could see the murkiness from the fine clays, etcetera. You didn't want to have runoff water. The N-P-K (nitrogen-phosphorus-potassium) issue on Flathead Lake was from the lawn fertilizer put on lawns right to the lakeshore, not from geese or septic tanks. The runoff from the lawns, buildings and roads went right on top of the clay lens and into the lake. The solution might be to back it up a little further from the lake as part of the variance request. Make the variance work so you had the right structure but backed it up further to solve the other problems AND then as part of giving this variance put a permanent note in the file for lot 2B so when that lot came in for a variance and a different architect said they wanted to be 15 feet from the property line, that would be the neighbor's viewshed they would be messing up, which wasn't fair to the neighbor or the people on the lake.

Wally said the other harder part of this was the consistency of viewshed was important. If you looked at the curvature of the lake, you should be able to put a mental curve around them and they should be that distance away on that curve, which protected the integrity of the lake as a corridor for wildlife, it protected [the applicant's] view to the neighbors and the neighbors' view across to the others. It looked picturesque and viewshed was a really important part of the Growth Policy document.

The Growth Policy was a tool to get them where they were supposed to go. The reality was the Growth Policy was a document that provided guidance. The zoning had to be consistent with the Growth Policy. If you enforced the letter of the [zoning] only, you didn't achieve the issues of water quality, protecting the view of the public, protecting [the applicant's] view when she built the house and [when they wanted to build] next door. This wasn't a function of 'Let's Make a Deal'. This was a function of having a specific purpose and getting to goals. They were supposed to preserve water quality and runoff right, have appropriate buffers on the beach areas so there was distance back and save the viewshed.

That sort of design stuff was the reason you did a variance, and it was unique to this property. The house on lot 4B was within 20 feet of the lot line. If [the applicant] built hers closer, that blocked their view too. As a lawyer as well as a planner, he'd recommend to her not to build so close because in 2 years when her neighbor wanted to build close, they would tell him he couldn't do that because he'd screw up the neighbors' view. Everyone was in the same boat together. If they needed the variance for the width, it should be doable to figure out how to back it up and make a permanent note so the next person didn't come in and ruin the very thing the ordinance set out to save in the first

place. [The applicant] didn't want the neighbor who has the undeveloped lot 2B to build close and cause a water quality issue that would cause her grief too, so the same playing field went for everybody.

The purpose of the variance was to achieve what you set out to achieve in the first place because the letter of the law didn't get you there. A creative architect, owner and planning group could get it done right. This might be a poster child example of how you did it right and how you did it better. He encouraged the Board not to be afraid of findings of fact or making them. Their job as a Board of Adjustment was to do exactly that: to hear what they had to offer, what the planners said, and what the Growth Policy document said to achieve. If their adjustment of the lines did it right, they were home free there. He could defend that in a court of law. If the neighbor sued and said [the applicant] was close so why couldn't they be close too, then no. She was close because it fit, it did it right, it achieved the goals of the viewshed for her and other neighbors and achieved the goal of saving the slopes, water and the rest because they backed the building up to where it needed to be, etcetera. It was a defensible product and a justifiable decision of the Board.

Wally explained that it was a different way of thinking. That was where they needed to be if they were really going to use the Growth Policy to accomplish what they were supposed to accomplish. Wally encouraged the architect and the owner to be creative and to read the plan. He talked about the curve and suggested not only backing up this house but also the next house that would come on the lot next door to fit the curve perfectly. He reiterated putting a note in the file so they could do the same sort of thing with the neighbor when they came to build, to save the public's view and water, the view and water of today's applicant, and everyone's slope.

Frank thought the viewshed was the biggest issue. He asked if you could put the next house in about the same place using the shoreline as the curve. Wally said it wasn't just the shoreline that was your curve, it was the arc from the building to the right on the unnumbered lot next to 2B and how it arced around to the other one. You didn't just follow the curve of the shore. You followed the curve of the slope and the grade of the steep slope that was in the front of it. You were driven by the steepness of the slope, the runoff water and the rest of it. Frank said that could vary from lot to lot. Wally agreed and said you could have a general idea of what it looked like.

Vince Gavin shared a handout that included more images and clarification about where they intended to move the little shed. When they designed the home, they were aware of the covenants. The architects looked at this conflict between the covenants and what the developer intended. The covenants were approved in August and the zoning code was approved in April. In his mind, there was probably overlap of public comment and [how] the zoning district was applied over this subdivision. It seemed odd. The covenants usually were greater than what the zoning districts required, not less. He contacted Robert for input but submitted the application before they received that. When Heather considered the purchase, she looked at the adjacent neighbors, the pattern of development and the covenants. The type of home that she directed them to design wasn't a mansion.

It was a 1900-square foot home, primarily single-level, that she intended to use year-round. They looked at the adjacent home and didn't want to be a bad neighbor by affecting their view. They walked the property with Jeff Gallatin and Ryan Nelson. They walked the slope and didn't want to take out this vegetation and they wanted to leave that pathway. He designed several homes in Polson, Finley Point and Skidoo Bay so he understood the soils issue. For the groundwater issue, he had Marc Carstens helping them with the stormwater management plan. He didn't have that plan done yet, since this meeting would tell him if he had to redo the site plan.

Vince said it was their intention to create a swale closer to the primary road. The water would be directed away from the lake. The foundation drain and items like that would be taken care of away from the lakeside for two reasons. First, they understood that you couldn't have water moving. It got an energy if it was moving, especially if it was coming off of a roof. They looked at what was reasonable. When they had Marc do the survey, they wanted to look at the other lots as well as the lot they were developing. They were cognizant of what the neighbor had and the use of that property. They also took into consideration the view from the lake and dock. Heather wanted a home with more of a cottage-like feel, not a big, grand timber-frame type home.

As far as the location of the home relative to the shoreline, Vince thought if they struck an arc and compared it to the adjacent home, they would find as the shoreline moved away, they were within a foot or two of where the adjacent home was, relative to the shoreline. The cabin itself was a cute little structure but it was intended to be temporary. It wasn't secured permanently to the grade. Heather intended to reuse the structure on this site. They wanted to relocate it after the home was in place to look at where it should be put but they could show where they intended to place it. She wasn't going to use it as a cabin. The existing drainfield was for a 3-bedroom home, which was what the home was proposed as so they weren't going to mess around with septic. He asked the Board to consider that if the adjacent property was granted the variances, they would like the same consideration. If they were granted the 20 feet then if the property that was adjacent to Heather's property was granted the same consideration, you would still have 40 feet of separation between these homes. That was quite a bit more than you saw by the golf course and on Bayview Drive. They had 10-foot setbacks.

Vince understood the intention of the zoning district. This was a transition from higher density parcels to rural parcels. The pattern of the development for this particular development was long, narrow lots instead of wide, shallow lots. Was it fair to say half of the lot was the setback and therefore you'd deal with a 60-foot wide home? They'd like to keep the home in the same position relative to the lake. He would present an engineered drawing to staff to mitigate the soil and runoff. The stormwater management plan would be from the licensed engineer. They would take other input, if the Board wanted to see more shrubs or if a landscape architect needed to be engaged. They could do that. It had a big impact. They didn't intend to put in a lawn or even follow the pattern of landscaping that the neighbor had. He asked for the Board's consideration. He offered to answer technical or design questions, or Heather could speak about why she purchased the property.

Frank commented that they were going to take care of the runoff by putting in engineered structures and get the water to the side away from the lake. Eventually the soil would be saturated if it was clay and sand. The water would come out somewhere. Vince said the water would be moving about 6 feet below the surface. Their intention was to create a swale that would be closer to the road side. They would put in a landscape sump and hard-pipe so they would create a volume area to collect this water. The roof structure involved was fairly small. He would have the calculations with their drawing to show the actual amount of water. The swale would be engineered to accommodate for that size. It would be far enough away that Mother Nature would start to take in where they had enough landscaping. It would be a lot better than what you saw on the homes of the neighbors or across the street.

Frank asked if the cabin would still be used for housing. Vince said he clarified that in his memo. Heather intended to use it mainly for storage for garden supplies because it would be located by the orchard.

Frank thought it was great they were trying to be creative and solve mutual problems to make this good for both parties. Were there fallback alternatives they were willing to go with or would they rather have the Board go through the exercise first? Vince said if they knew they would be limited to the 30-foot setback, they would definitely come up with a design that could go with that. They submitted the plans because of the conflict between the covenants and the zoning. If he was the developer, he would be here saying that this wasn't what he had envisioned. They wrote into the covenants that a 20-foot setback was going to be fair and adequate. The adjacent property was within the 20-feet as well and was less than 20 feet in one area. The homes were far away from the driveway and so far back that there wasn't a definitive view to the lake from the primary driveway. He asked if they could keep with this design and take a look at moving back a few feet. The primary variance requested was for the 20-foot setback. If they wanted to have a discussion about if 20 feet was too shallow and if it was 25 or something like that, he thought they would entertain it. Right now they would appreciate the 20-foot setback.

Steve referred to an alternative brought up in the staff report to detach the garage and relocate it with respect to the house. The house structure itself was 69 feet instead of 81 feet so 12 feet was gained in width. If the house was backed up for environmental considerations, lot width was also gained. Vince said they wouldn't gain as much as was mentioned in the report that gave a width of 70 some feet if it was pushed back. Steve thought 69 feet would fit. It would be close. Vince said if they pushed the garage forward a bit, they could get some more space on one side. Steve said the disappointment there was when you did the dishes in the kitchen, you would look at the side of the garage. Vince said the main reason they pulled the garage over was to open up the front of the house. The other reason for locating the garage as they did was because they knew a septic tank was coming out of the existing shed. If they moved the garage forward, they would have to move the septic tank, at a cost to the owner. They wanted to keep the garage doors on the side of the home. There were some aesthetic things that fit with the

cottage look that Heather wanted. Frank asked what direction was meant by moving the garage forward. Steve and Gavin used a map to talk further on this.

Steve posed another question regarding attachment 3. It looked like there was a shadow of the neighboring house there. With the orientation of the two homes, it looked like they were 30 or 40 feet in front of this house. Vince pointed out more items on the map. Like Wally had pointed out, the shoreline peeled around and they tried to match that same line. If they needed to move the house back 5 feet, they were considering whether or not they needed to keep the decks out that far. The home was the shadow portion. He pointed out the decks. From the orientation of the houses, and not necessarily looking at the shoreline, Steve thought it looked like the steepness of the bench changed in there. One thing to look at rather than the shoreline would be the bluff on the edge of the bench. It took a different curve than the shoreline itself. It looked like there had been some landscaping in front of the existing house next door. Gavin discussed this and various other points and alternatives with the group, using a map, including comparing and contrasting the neighbor's features with the plan for this project, the septic tank location, and possible movement of structures and consequences using the map. Vince said if the Board just needed them to move the home back 5 feet or so, it was easy for him to pinpoint where the 'ship's prow' was on this and arc it across since he'd had this surveyed. He wanted to make sure they weren't talking about pushing the home back 50 feet, where Heather's viewshed would be compromised. Frank asked about the highest quality of direction of view. He pointed out this would restrict the neighbor's northern view more than the other views. Vince said they took that into consideration when they laid out this design. They didn't know what would come in on the other side.

Steve thought the house could be moved back more than 5 or 10 feet. Vince asked about utilizing the shoreline versus just a parallel projection if they wanted it moved back. If you used this logic, this other person would be asked to put their house way back and that wouldn't be fair to them. He showed where he thought they'd probably want to build. They had taken that into consideration. Steve said the neighbors had the advantage of a wider lot. Vince agreed it was wider; it was pie-shaped and narrowed down. Steve recalled another application recently in this neighborhood with a 65-foot wide lot, where a 5-foot wide house wasn't reasonable.

Wally referred to part of the issue to stay away from the slopes to solve the water issue. He showed per the contour lines if you backed up 15 feet or so, you were farther away from the steep gradient of the front and that solved your drainage, water and quality issues etcetera. You hadn't caused the problem of the variance because you still had the viewshed between the houses. He repeated that a note needed to be on file so when the other neighbor came to develop, they needed to have the same conversation to not enter the viewshed, approach or space that you looked between from the lake. He indicated these on a map.

Steve said the neighbors had the option to twist the house a little bit. The corner that was closest to Heather's property was back farther. Frank said it depended on what view they wanted. Vince and Wally discussed options at the map. Vince said if you were going to

define where these homes were relative to one another, it was better to define from the shoreline distance, working with a horizontal distance, versus contour to avoid unintended consequences. He showed this on the map. Wally continued at the map, showing how they could meet many goals if they backed up. You would have more space in the front that was flat, the setback [inaudible] and you still conformed to the requirements of the Growth Policy by keeping as much view as possible, solving the water quality issue in the front, keeping your potential view long term by keeping something on the adjoining property. They were back to the purpose of the ordinance and it kept the character of the neighborhood. He needed the Board to understand they had the power to tinker with this if they had good reasons and rationale for a variance to get to the general purpose and the applicants understood what was going on and why they did it. It wasn't making a deal. It was accomplishing what [the applicant], the architect and the planners were after. They, as a Board of Adjustment, could say they met the standards of the Growth Policy that were set for them. It was their finding.

Wally mentioned that Flathead Lake was like a teacup. The clay held it. The idea of an infiltration structure was great for how to do it.

Steve asked about moving the garage and narrowing down the structure. Vince said they could probably move the garage forward. If they moved it forward, would they be talking about modifying the request from the 20-foot setback to a 25-foot setback? Robert asked if it was necessary to modify the garage if they agreed to move it back. Steve thought the first choice would be if they could build the house they wanted moved back a little bit, move the garage and not need a variance. Heather was concerned this would take the view away from the kitchen and she would be looking at the garage. Steve thought they could move the garage back too and it wouldn't seem so much like it was in front of the kitchen windows. Wally thought the other concern besides the design of the window long term was the issue of the septic tank etcetera. The real focus was not so much doing a variance or not for the width. The real issues were water quality and runoff in the front. One neighbor had a variance for the same footage, and the covenants had that footage, so you hadn't broken the character of the neighborhood but you saved the viewshed, the looks of Heather's, the look of the neighborhood, the water quality and the slope issue and you put a note in the file [for the other neighbor]. Then there was a really good reason the next time through to address the slope question and hold houses that Wally indicated and their improvements back as well in a direction that he showed so they wouldn't be on the slope. When they needed a variance for width, you could get where you needed to go. It was the Board's facts and decision.

Robert understood the confusion with the covenants. He didn't know why they ended up at 20 feet. The 1994 subdivision approval that came out said that they were supposed to match what was proposed for the zoning at the time. He suggested they leave that alone and move forward with it. Don suggested that they move the whole works back 15 feet and approve the variance. Wally said if they did that, their findings should include that there would be better filtration in the front, less water stockpiling in the front, less risk of sediments, slope, runoff, and they'd complied with the spirit of the setbacks on the adjoining properties and preserved a viewshed for the neighbors and this parcel and the

public looking at the lake. They would write the findings themselves. Based on the conversation, that was what they accomplished. The architect and the owner should have what they wish to add. The findings protected them as well in terms of product. [The findings] protected everyone. Frank asked about moving the garage a little. Vince thought they could move it over 5 feet. They had the septic tank issue there. He could see them moving the home back 15 feet. If it looked like they could slide [the garage] over, he'd modify the drawings.

The group conferred further at the map. Robert asked the group to consider that the new drawings showed the excavated basement with a retaining wall that you'd walk into. This was the first time staff had seen that there would be something like that. That was even more reason to make sure this got pushed back. They hadn't been aware of excavation going on there, and that was right in the area of concern. Vince said the elevations showed the finished grade going down. The group conferred further on the diagrams. Robert clarified that his point wasn't a deal-breaker but that it gave even more reason for the Board to make sure it was pushed back. It took the development out of some of the more sensitive areas. He thought they had the facts to make findings. They didn't have to be complex but they did have to make findings. He asked Heather if she was comfortable with the direction they were going.

Heather said she was. When she bought the property, she read the covenants, which said 20 feet on each side, and looked at the house next to her. Her plan was to build a relatively simple one-level house. Moving it back 15 feet seemed like a smart idea. She did want to protect the land. She wasn't going to fertilize the grass. Robert said if they'd had the facts that were now available, they probably would have proposed a modified variance that brought it back 15 feet farther, like what the Board was thinking. Staff were comfortable with this. LaDana reminded that they needed to make findings to support that.

Steve mentioned that the problem he had with the comments of 'we read the covenants but we didn't read the zoning' was that it was analogous to being pulled over and saying you hadn't read the speed limit sign. It was hard to check on everything when you bought a piece of property but it didn't mean those [things] didn't need to be enforced or considered when developing. He turned to the suggested finding E about minimum relief on pg. 17 of the staff report. If this could be done with a 25-foot setback, he would rather do that. It wasn't uncommon for someone else to come in and point to what the neighbors had done. The Board had to consider that. They tried to look at each lot and each circumstance, and not just what the neighbors had done.

Steve asked how wide the house was. They gained about a foot by moving the house back. If they moved the garage over 6 or 7 feet, they would have 24 or 25-foot setbacks. Vince said the problem with the shifting of the garage was the septic tank. Wally added it was also the view from the kitchen. You could move it 3 or 4 feet and not screw up the kitchen or the septic tank. It got closer to where Steve was aiming. If only 3 or 4 feet would work, then that would make it get there for the factual reason for a variance. The other reason you didn't want to move the septic tank was that it was already at or in the

clay bed. If you replaced it, you perforated the cup. This was an environmental reason and a water quality reason to try to have it work so the septic tank could stay. They shouldn't be afraid to say in the findings of fact that if they could get 3 feet better that was fine but if they couldn't because of geologic, physical, water quality and design limitations then they wouldn't do it. At some point they had to tell the architect and the applicant to bring them the drawing.

Steve asked about trying to maximize setbacks and having the planners fill in after the architect had a chance to see how they worked. Robert suggested asking the other board members about the direction to go. If the Board was thinking of a particular number, they should go with the number. Frank suggested they thrash out a reasonable decision and specify and tie it down as much as possible with dimensions. Then they could change the findings.

Don said he was good with the 20-foot setback. It was easier to show it and they didn't get in trouble by trying to do that. Two or 3 feet wasn't a big deal. They were going to move the house back 15 feet, which still gave 22 and 20 feet, or maybe a hair more. Wally pointed out the option that if the architect and owner were game, they could table it for a week or whatever to sit down and figure out what they could do for the minimum and what the variance really could be, design-wise. They could say they intended to give a variance and wanted the footage to be acceptable to all parties based on the information that would come from the architect. Then they would write the findings and decision in a week or two, when they got the number from him.

LaDana asked if they would have to come back for another meeting to do that. Wally said they could continue the meeting. The problem was to make sure it didn't get changed so much that the public was totally annoyed. For instance, you couldn't go from a 20-foot variance to a 7-foot variance. It had to be within a reasonable parameter. You could schedule a meeting to continue a tabled application based on the need for more information to get a final number. Then you were okay and you hadn't changed the playing field.

Frank asked if the staff would help rewrite the findings. LaDana replied the Board would rewrite their findings to support their decision. Robert explained that staff would help them but would not write them for the Board. The Board had the facts already in front of them. Frank asked about the previous time since he'd been on the Board when they discussed tabling an item. Don and LaDana recalled the applicants withdrew it.

Vince said that given the time of year, a builder was lined up. He didn't have the stormwater plan yet because he wanted to make sure where the home would be positioned and if they were going to have to redesign the home. Once the Board knew what they were going to grant as a variance, then he could get drawings to Robert. They wanted to start construction in a week or two if they could. They'd like to try to resolve the variance issue sooner than later.

Wally said another way to word the variance would be to say 20 feet, to be minimized by the architect to the extent possible, within the parameters of the septic tank mounting and preserving the view from the kitchen. The monkey was then on their back. He gave the Board a caveat that the expectation for the architect and the Board was that the Board would do the best job they could to get it there. The architect would be back again, and the Board of Adjustment needed to remember if the architect didn't do the best job for them. The people who treated [the Board] right and did it well had more credibility in the future than the people who didn't, so that was what [the Board] needed to remember.

Board members turned to discussion and wordsmithing of the findings. Steve asked for help with Finding A, given that lots of houses were less than 60 feet wide. Wally said there was an existing septic system and drainfield which they didn't wish to remove or fill to preserve the integrity of the aquifer that was there now. It was a human-created physical feature but still a physical feature of the land. The adjoining property had a variance of 20 feet. This also meant leaving a variance of 20-some feet on this one as well still preserved the viewshed etcetera, and was done without harming this person more because of its physical location versus what was done on the adjoining property. By placing the house back farther than the law would technically require them to do and having a drain system for water that dealt with the issue of too much water flow, the developer/ owner/ architect put [the County] in the position where they had a better water quality-riparian quality here than they'd have otherwise. The issue was driven not by the ordinance but by the physics of the sun. They were getting a benefit. They could preserve, protect and prevent. Usually you couldn't promote. The benefit on this one was by doing what they were doing, they got to promote better water quality while they preserved water quality and prevented harm to it. They could get away with breaking the rule of not promoting by accomplishing it through something that covered the values they needed to do based on the growth policy and at the same time a willing applicant to make that work. They could cite they were accommodating those physical limitations by a variance etcetera that did it.

The group continued to talk about how the discussion of the situation fit with the findings, and to wordsmith those accordingly.

Wally asked the Board which house would negate the ability of the County and the public to achieve the values set forth in the Growth Policy as the reason for the zoning. They didn't achieve those other goals if they built a conforming house [right at the edge of the bluff]. The purpose of the variance was to stop an undue hardship on the owner and on the goals of the Growth Policy. They were mitigating the applicant's adverse harm and also facilitating total mitigation of the adverse harm to the public and the lake itself for water quality, which were goals set up inside the Growth Policy.

Frank thought the Board was saying to move the building back 15 feet and to move the garage in as much as possible, considering the existing septic tank. Robert said they had slopes, soils, viewshed and overall impacts to the general neighborhood and public for hardship, and LaDana added water quality, which was huge.

The Board wordsmithed the findings and arrived at the following:

- a. Some specific physical circumstances exist, including steep slopes, sand/clay soil and the existing septic tank location, which limit the ability to develop the lot. The lot's width does appear to limit the ability to develop.
- b. The circumstances associated with the natural features of the lot and conflict with covenants would result in undue hardship [in] achieving the goals and objectives of the Polson Master Plan.
- c. The lot has existed in its current size (2.02 acres) and configuration since 1994. The hardships associated include the existing covenants, which allow a 20-foot setback, location of existing septic tank, sensitive soil conditions, and lot orientation/views, which were not created by the action of the present owner or occupants.
- d. If the variances are approved with the relocation of the structure 15 feet farther back from the slope and the suggested conditions and terms, so that a runoff management plan is developed... {continue with the rest as written from that point}.
- e. If the structure is moved back 15 feet farther from the slope, and the garage is moved north to minimize the width of the structure while still providing use of the existing septic tank, and the location of the structure is adjusted to increase the side setbacks, then those setbacks would be the minimum relief necessary.
- f. First paragraph kept and second paragraph changed to: The structure will be located back from the slope adjacent to the lake which helps mitigate impacts.
- g. Unchanged

For the conditions, Robert noted that two big things were changing. One was that essentially the structure was moving back 15 feet so there would be a change for that. They had a discussion about possibly increasing the setback as was reasonably possible by the architects. He checked with the Board that those were the two big changes that were occurring here. Vince Gavin said they could easily center the house so the setbacks were the same on either side. The group adjusted the conditions as follows:

Condition #1: This approval allows for the proposed development of a new single-family residence and attached garage to have a setback no less than 20 feet from the northern and southern property lines on the above-described parcel, and more if feasible.

Added condition near #3: Prior to issuance of a zoning conformance permit, a modified site plan shall be submitted, demonstrating that the proposed development would meet the conditions of this variance approval, including relocation of the structure an additional 15 feet from the slope.

Condition #7:

First bullet: A minimum of 20 feet and more if feasible....

Second bullet: A minimum of 20 feet and more if feasible....

Third bullet: '420 feet' changes to '400 feet'

Fourth bullet: '130' changes to '145'

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the variance subject to the conditions, terms and findings of fact as modified during this meeting.

Steve noted he continued to have problems with identifying a hardship as having to do with implementing the Growth Policy or Polson Master Plan, and protecting the environment and those kinds of things. It was hard for him to imagine a hardship that was more community-oriented rather than property owner-oriented. That was new for him in this understanding. He wasn't totally comfortable with it. Board members reviewed that a passing vote required 3 votes in favor.

Motion carried, all in favor.

OTHER BUSINESS (6:34)

Wally appreciated this [approach] was new. He commented people tended to forget the purpose of the regulations in the first place. The zoning ordinance had to be consistent with the growth policy. The purpose of the ordinance was to achieve those goals. Achieving them created a hardship on the owner. Sometimes it was hard to remember they couldn't promote. They could preserve, prevent and protect and if they got the benefit of promoting at the same time, they could do it. It was wrapping their heads around where they were going. Did they really want water quality better, no slide down into the lake and preserving the viewshed from the lake to the person and the person to the sides? What did they really want to have one way or the other way? They sat down and went through the reasons why, what they were doing and where it went. He appreciated their willingness to wrap their heads around it, and it wasn't easy. They'd do a couple more before it was simple. The hardship was created not just by the nature of the land [but also by] the public's desire for setback, open space. He cited a 1926 case of Euclid versus Ambler Realty Company. That was the original zoning case. It talked about achieving the public good, public health, public safety and so forth. The real reason to have the zoning was to accomplish that stuff. It was a federal case. One question was how you balanced the public [inaudible] and public good versus the private property right. At the same time, with what the Board did by doing it this way, they got to a way to accommodate the public interest that the zoning ordinance didn't accommodate. He thanked the Board.

Frank Mutch, chair, adjourned the meeting at 6:40 pm.